

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MAY 26 2020

UNITED STATES OF AMERICA,

Plaintiff,

No. 18-CR-03989 WJ

vs.

ALLISTER QUINTANA,

Defendant.

SECOND MOTION TO RESCHEDULE SENTENCING AND EXTEND DEADLINES

Defendant Allister Quintana, through his attorney, Ray Twohig, moves this Court for an order rescheduling the sentencing, which is currently set for June 22, 2020 at 2:00 pm (Doc Text) due to the continued complications arising from the Covid 19 Pandemic, with a proposed additional delay of one month, and also proposes extending deadlines to submit responses to the Pending Motion (Doc 64) and the sentencing memorandum. The grounds follow:

1. The Defendant has obtained the assistance of Dr. Christine Johnson, PhD, a forensic psychologist, to evaluate the mental health issues which the court should consider in imposing sentence in this matter.
2. The Presentence Report has been filed and submitted to counsel by the probation office on March 16, 2020. It has been reviewed by counsel and mailed to the Defendant, who is in custody at the McKinley County Detention Center. As counsel represented in the Unopposed Motion to Reschedule Sentencing (Doc 62), due to orders issued by New Mexico Governor Lujan Grisham, visitation by counsel and

Dr. Johnson is restricted, and both counsel and Dr. Johnson have been directed and encouraged to shelter in place. This Court had, at the time of filing that motion, substantially restricted activities taking place at the courthouses, and had entered orders, including Administrative Order 20-MC-004-12 on March 30, 2020, finding that, depending on their circumstances, sentencings “cannot be conducted in person without seriously jeopardizing public health and safety” and authorizing use of video or telephone conferencing. Defendant contended at that time, and continues to contend that the sentencing in this case should be in person.

3. Defendant, in that motion asserted that the two month delay which was sought, “may serve to alleviate the risk to a sufficient extent to allow for in person sentencing.” However, the risk has not been alleviated sufficiently, and has in many ways gotten substantially worse. The Court has issued additional Administrative Orders including, most recently Administrative Order 20-MC-04-19. The Coronavirus pandemic has hit McKinley County particularly hard, to the extent that in recent days it has been widely reported that Gallup has become the city with the highest increase in positive cases in the United States, while the United States now leads the world in new infections and in deaths. The Governor has ordered Gallup closed to an extent not seen in other areas at the request of the Gallup Mayor.
4. In person meetings with Mr. Quintana at the McKinley County Detention Center have continued to be barred. Counsel has been able to have phone contact with him and has discussed the presentence report and the United States’ Motion for Upward Departure Or In the Alternative Variance, and Sentencing Memorandum.

These discussions have been limited by virtue of telephone limitations, and have not been sufficient to allow filings in this case to address the Presentence Report (Doc 60) or the Unites' Motion for Upward Departure or In the Alternative Variance, and Sentencing Memorandum (Doc. 64).

5. Counsel has learned that some defendants in the McKinley County Detention Center have been able to have meetings via Zoom with their attorneys, and with experts. Dr. Johnson has undertaken to arrange for such a meeting for her with Mr. Quintana in the future. It is currently being scheduled. That process is not sufficient to allow completion of the Psychological evaluation necessary for this case, and undersigned counsel seeks an additional order to allow sufficient access to Mr. Quintana by Dr. Johnson, and by undersigned counsel.
6. The evaluation by Dr. Johnson is essential for counsel to complete his sentencing memorandum and response to the Government's motion. Additional meeting time with Mr. Quintana is also necessary for counsel in order to allow a review of documents which is not feasible by phone, or even by Zoom meeting.
7. An additional one month extension, to include extension of deadlines for filings by the defense, would allow counsel to attempt to arrange and conduct additional meetings. Nonetheless, the extensive limitations on contact and access during this continuing period of limited access as well as the reluctance by counsel and Dr. Johnson to be exposed to great risk to themselves and Mr. Quintana of contracting the Covid 19 virus, may require further delay.

Assistant United States Attorney Joseph Spindle does not oppose the motion.

Respectfully submitted,

/s/ Ray Twohig

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I hereby certify that on the 26th day of May, 2020, I filed the foregoing electronically through the CM/ECF system, which caused all parties and counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Ray Twohig

Ray Twohig